

UNITED STATES DISTRICT COURT

for the

Western District of North Carolina

United States of America

v.

Barry Fitzgerald Derr

Date of Previous Judgment: 1/19/99

(Use Date of Last Amended Judgment if Applicable)

)

)

) Case No: 5:98CR125-5

) USM No: 13613-058

) Claire Rauscher

) Defendant's Attorney

**Order Regarding Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2)**

Upon motion of  the defendant  the Director of the Bureau of Prisons  the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion,

**IT IS ORDERED** that the motion is:

DENIED.  GRANTED and the defendant's previously imposed sentence of imprisonment (as reflected in the last judgment issued) of 235 months **is reduced to** 188 months.

**I. COURT DETERMINATION OF GUIDELINE RANGE (Prior to Any Departures)**

Previous Offense Level: 35

Amended Offense Level: 33

Criminal History Category: IV

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Previous Guideline Range: 235 to 293 months

Amended Guideline Range: 188 to 235 months

**II. SENTENCE RELATIVE TO AMENDED GUIDELINE RANGE**

- The reduced sentence is within the amended guideline range.
- The previous term of imprisonment imposed was less than the guideline range applicable to the defendant at the time of sentencing as a result of a departure or Rule 35 reduction, and the reduced sentence is comparably less than the amended guideline range.
- Other (explain): The Bureau of Prisons shall contact the NC Department of Correction to determine the appropriate release date.

**III. ADDITIONAL COMMENTS**

Upon release from imprisonment, and absent a residential plan accepted by the U.S. Probation Officer prior to release from incarceration, it is ordered that as a condition of supervised release the defendant shall submit to the local Residential Reentry Center for a period not to exceed 90 days, with work release, at the direction of the U.S. Probation

Except as provided above, all provisions of the judgment dated 1/19/99 shall remain in effect.

**IT IS SO ORDERED.**

Order Date: April 28, 2010

Effective Date: April 28, 2010  
(if different from order date)



Richard L. Voorhees  
United States District Judge

